

**Workers' compensation reforms under
Senate Bill 899**

First annual report of progress



California Division of Workers' Compensation

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April 2005

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Introduction

A brief history of workers' compensation in California

Workers' compensation insurance began in 1913 as a bargain between labor and employers. Employers provide no-fault insurance against workplace injuries, which delivers five benefits:

- Temporary disability payments
- Medical expenses (both evaluation and treatment)
- Vocational rehabilitation or supplemental job displacement benefits (SJDB)
- Permanent disability
- Death benefits.

Employers, in turn, are not subject to lawsuits that could be filed by workers injured on the job. The system was not intended to be profit-based. However, many people have learned how to profit from the system at the expense of employers and injured workers.

History of Senate Bill (SB) 899

In an effort to save jobs, reduce costs for employers and improve care for injured workers, SB 899 was overwhelmingly passed by the Legislature and signed into law by Gov. Schwarzenegger on Apr. 19, 2004.

SB 899 reforms focused on controlling escalating medical costs, which account for 51 percent of every dollar and indemnity benefits, which account for 49 percent of every workers' comp dollar spent.

Cost drivers

California workers' compensation costs	Paid by insurers (Source: WCIRB)	Estimated paid by all California employers (Assuming 20% of WC coverage is by self-insurance)
Total costs (Indemnity, medical, expenses and changes to total reserves)	<u>2003:</u> \$21.8 billion <u>1997:</u> \$6.8 billion	<u>2003:</u> \$26.7 billion <u>1997:</u> \$8.3 billion
Medical costs	<u>2003:</u> \$4.9 billion <u>1997:</u> \$2.1 billion	<u>2003:</u> \$6.1 billion <u>1997:</u> \$2.6 billion
Indemnity costs	<u>2003:</u> \$4.6 billion <u>1997:</u> \$2.7 billion	<u>2003:</u> \$5.8 billion <u>1997:</u> \$3.4 billion

SB 899 mitigates the problem of escalating costs by providing prompt, effective medical treatment to injured workers so they recover from injuries and return to

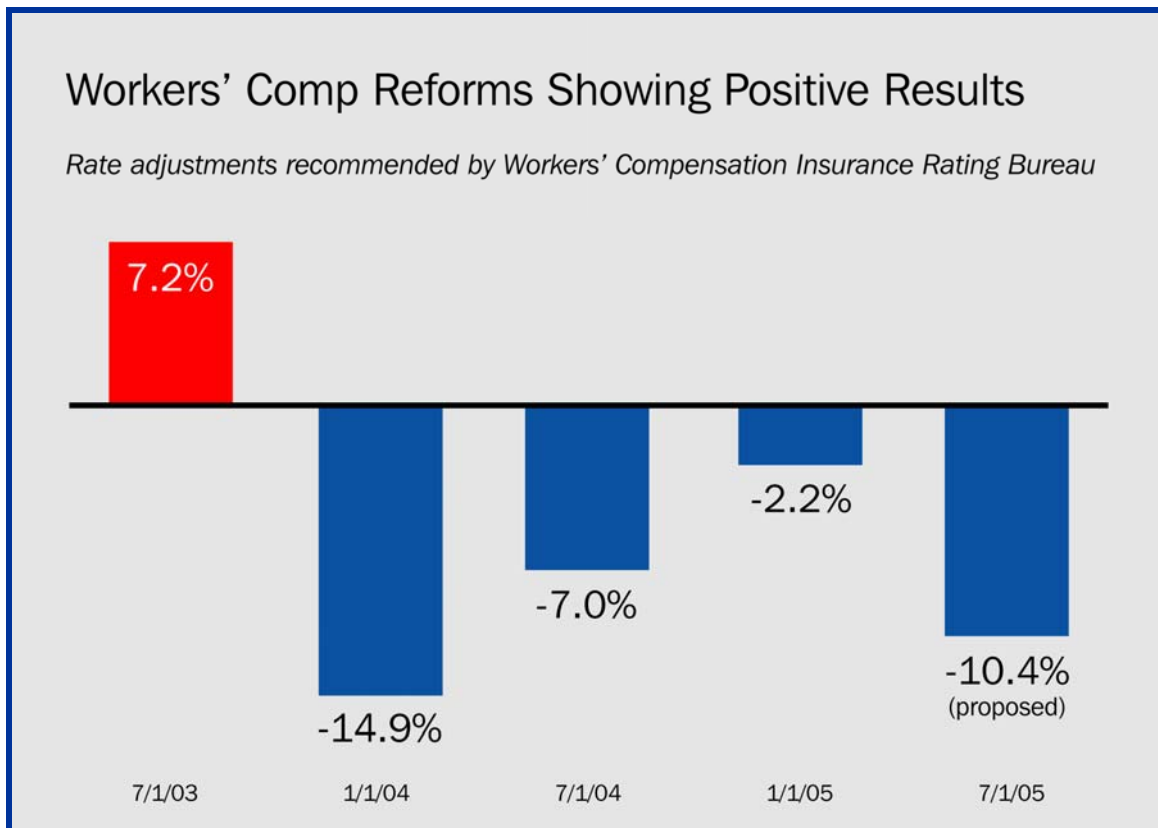
work: Medical provider networks (MPNs) provide a framework for effective medical treatment; medical treatment guidelines determine whether proposed medical treatment is necessary and will be effective; new permanent disability rating schedule (PDRS) provides objective and consistent methodology to determine disability rating; and return to work provision supplies incentive for employers to return injured workers to the job.

The result of implementing these reforms is more effective medical treatment and more accurate disability ratings, which result in significant cost savings to the workers' compensation system. Because the incentive is to treat injuries and return employees to work, the incentive for those who profit from the system by encouraging injured workers to hold out for higher disability awards is eliminated.

Cost savings

The Workers' Compensation Insurance Rating Bureau of California (WCIRB) tracks actual average rates for insured employers. The WCIRB reported a peak level of \$6.35 per \$100 of payroll in the last quarter of 2003. By the third quarter 2004, that rate was \$5.34 per \$100 -- a reduction of 16 percent.

Since that time, more average rate drops were recommended, which reduced rates by 2.2 percent effective Jan. 1, 2005, and the WCIRB proposed another 10.4 percent decrease to be effective Jul. 1, 2005. (This proposal does not include any impact of changes to the permanent disability schedule currently in regulatory process except for those changes seen as automatic, such as "weeks of benefit" changes and "bump-up/bump-down").



If insurers pass those changes through in full, the average cost of workers' compensation insurance would be \$5.22 per \$100 of payroll for early 2005 and \$4.68 for late 2005. **The latter amount would be a reduction of 26.3 percent from the peak rates charged in 2003.**

From the *Sacramento Bee*, January 2005:

"California business owners saw the average annual premium for workers' compensation insurance drop between 13.9 percent and 16.6 percent in the last six months, according to records from the state Department of Insurance."

Fewer disputed claims entering the system

In April 2003, a total of 17,104 new disputed claims entered the workers' compensation adjudication system, but by January 2005, that number was down to 10,878 -- a reduction of 36 percent.

Regulations and program implementation

The Division of Workers' Compensation (DWC) accomplished much in 2004, one considerable piece of which was meeting all of SB 899's statutory deadlines for implementing regulations:

1. Medical provider network (MPN) emergency regulations effective Nov. 1, 2004
2. Independent medical review (IMR) emergency regulations effective Jan. 1, 2005, to coincide with when the first MPNs could be established
3. Permanent disability emergency regulations effective Jan. 1, 2005.

The regulatory process is off to a roaring start in 2005, with the administrative director giving priority to adoption of permanent regulations for MPNs, IMR, the permanent disability rating schedule (PDRS) and utilization review (UR).

This year's focus also includes adoption of regulations for medical treatment utilization guidelines, return to work, pre-designation of physicians, supplemental job displacement benefits, assessing penalties for utilization review violations and Labor Code section 5814.6, new official medical fee schedule, and revised qualified medical evaluator (QME) regulations.

Advisory groups

To draft so many regulations in a timely fashion, the division uses a team approach and conducts advisory groups, which help iron out problems before formal rulemaking on an issue begins. Advisory groups are made up of invited stakeholders and division staff.

When drafting regulations, the division's goal is to provide guidance to those using the system. Advisory groups afford the opportunity for the division to receive input from system users so the impact of the division's actions is clear.

At advisory group meetings, members engage in frank discussion and debate about regulatory language and clarity.

Each regulatory package is supported by the work of an advisory group, which includes 20-30 members. While the core group is invited, anyone who asks will be included in an advisory group. This produces a diverse membership, including representatives of labor, employers, insurers, applicant and defense attorneys, medical providers, injured employees and the Commission on Health and Safety and Workers' Compensation (CHSWC).

"The advisory groups, and the public comment we get in that venue, afford the division the opportunity to sort through issues on the front end."

--DWC Administrative Director Andrea Lynn Hoch

Medical provider networks (MPN)

The MPN regulations govern the medical treatment component of the workers' compensation system, and are designed to improve the treatment process for injured workers through the creation and operation of medical provider networks.

An MPN is an entity or group of providers, set up by an insurer or self-insured employer and approved by the administrative director of the Division of Workers' Compensation, to treat workers injured on the job. Each MPN must include a mix of doctors who specialize in treating work-related injuries and doctors with general areas of medical expertise, and is required to meet access standards to care for common occupational injuries and work-related illnesses. MPNs must follow all medical treatment guidelines established by DWC and allow employees a choice of provider(s) in the network after the first visit. MPNs also must offer an opportunity for second and third opinions if the injured worker disagrees with the diagnosis or treatment offered by the treating physician.

To ensure injured workers have easy access to treatment, the regulations require MPNs in urban areas to make certain a primary care physician and a hospital for emergency care are located within 30 minutes or 15 miles of each employee's residence or workplace: Specialists must be within 60 minutes or 30 miles. Alternate standards for rural areas must be approved by the DWC administrative director on a case-by-case basis.

The regulations provide safeguards for workers injured prior to the establishment of approved MPNs by allowing them to continue to receive treatment from their existing doctor(s) if the worker is scheduled for surgery or if the worker's condition is acute, serious and chronic, or terminal.

Additionally, treatment delays caused by insurer or self-insured employer objections to proposed treatments will be reduced because they will be more confident MPN doctors are following appropriate treatment guidelines.

As of April 2005, DWC has received over 800 applications and has approved 477 MPNs. No default approvals have occurred because the division has never missed the statutory timeline required for approval.

Independent medical review (IMR)

As part of an MPN, an injured employee has the opportunity to seek a second and third opinion from physicians within the MPN if he/she disputes the diagnosis, diagnostic service(s) or medical treatment of his/her treating physician. If the dispute is not resolved by the second or third opinion process, the injured worker may seek an independent medical review from a physician or independent medical review organization on contract with the administrative director.

The IMR regulations establish the criteria and process for contracting with individual physicians, and for establishing a statewide list of eligible independent medical reviewers.

In addition to the physician application process, the new regulations outline the manner in which an injured employee requests an IMR, which could involve an in-person examination or records review. After the examination or records review, the independent medical reviewer must issue a report to the administrative director with analysis and a determination whether the disputed diagnostic service(s) or medical treatment was consistent with the medical treatment utilization schedule adopted by the administrative director, or the American College of Occupational and Environmental Medicine (ACOEM) guidelines if the administrative director has not yet adopted a medical treatment utilization schedule.

If the independent medical reviewer agrees with the diagnostic service or medical treatment prescribed by the treating physician, the injured employee must continue to receive medical treatment within the MPN. If the independent medical reviewer does not agree, the injured employee can seek diagnostic service or medical treatment from a physician of his or her choice within or outside the MPN.

As of April 2005, the DWC has received over 900 applications from physicians to be on the IMR list. Of those, 667 have been approved, 27 are not eligible, 38 are under further review and 247 incomplete applications have been returned.

To date, DWC has not received a valid request for IMR.

Qualified medical examiner (QME) panels

Qualified medical examiner (QME) panels are sought when parties to a claim have a dispute over permanent disability or other medical issues. Prior to passage of SB 899, only an unrepresented injured worker was allowed to seek a panel QME, and only in cases where liability for the injury had been accepted. SB 899 added a provision, which became effective Apr. 19, 2004, which allows claim adjusters to initiate a QME panel in cases where liability for the claim is in question.

Additionally, beginning Jan. 1, 2005 represented workers in disputes over permanent disability, other medical issues, or claim liability can also seek a QME panel.

Because of these changes, the DWC has seen a dramatic increase in the number of panels requested, which means those with disputes are utilizing the process to

resolve them. The division is delivering panel requests within the statutory timelines, which facilitates the resolution of medical disputes to get injured workers the treatment they need to return to work.

QME panels processed:

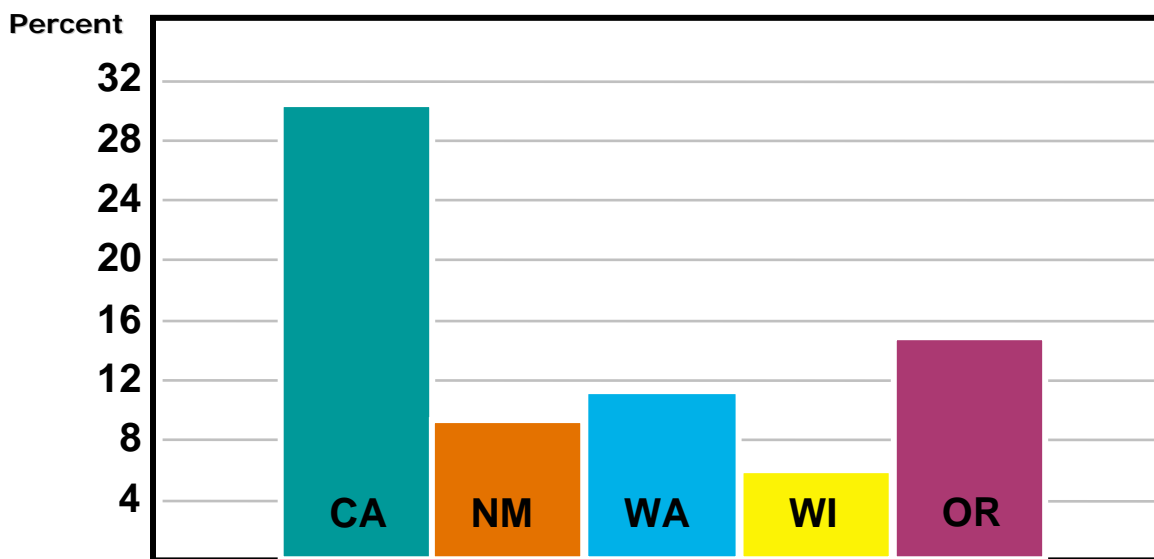
April – November 2003	13,871
April – November 2004	20,288
January – April 2005	13, 333

Permanent disability rating schedule (PDRS)

Permanent disability benefits are paid to injured workers who will never recover completely from their injury, and will always be somewhat limited in their ability to work. Before those benefits can be paid, a worker's level of disability must be rated.

Of indemnity benefits paid by insured employers in 2003, payments for permanent partial disability accounted for 41 percent of every dollar.

Because of subjectivity in the prior schedule, California has the highest fraction of disputed permanent disability claims in a five-state median: 30 percent, compared to nine percent in New Mexico, 11 percent in Washington, seven percent in Wisconsin and 15 percent in Oregon.



Lost-time claims with PPD

(Source: Commission on Health and Safety and Workers' Compensation)

SB 899 created a new system for determining percentage of permanent disability based on "the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of such injury, consideration being given to an employee's diminished future earning capacity."

For the first time, the new PDRS makes ratings more accurate by basing them on objective medical conditions and empirical wage loss data, instead of subjective factors and work restrictions currently used to calculate a permanent disability rating.

Under the old system, two workers with the same type of injury could receive entirely different permanent disability ratings because there was so much subjectivity in the way impairment was evaluated, and in the way it was converted into a disability award. The old schedule also rewarded less serious work-related injuries with higher disability ratings based on over-reliance on subjective factors and work restrictions, resulting in disability ratings that did not accurately reflect the employee's disability and ability to return to work.

The new schedule promotes consistency, uniformity and objectivity by replacing subjective factors and work restrictions with objective medical evidence based on the American Medical Association (AMA) Guides, 5th Edition. Using the AMA guides gives everyone the same methodology to determine impairment. The AMA guides are used by 41 other states and in the federal workers' comp system.

Once an injured worker's impairment is objectively evaluated using the AMA guides, three adjustment factors (diminished future earning capacity, occupation and age) are applied to convert the impairment rating into a disability rating. All three adjustment factors are clearly laid out in the schedule and result in very similar disability ratings for similar types of injuries.

Pre-designation of personal physician

The first draft of these regulations was distributed to advisory group members for discussion and comment, and the advisory group met Mar. 28, 2005. Member comments are being reviewed by DWC and a revised draft of the regulations will be distributed to advisory group members and posted on DWC's Web site in May 2005.

Return to work

The first draft of these regulations was distributed to advisory group members for discussion and comment, and the advisory group met Mar. 28, 2005. Member comments are being reviewed by DWC and a revised draft of the regulations will be distributed to advisory group members and posted on DWC's Web site in May 2005.

Section 5814.6 penalties

The first draft of these regulations was distributed to advisory group members for discussion and comment in February, and the advisory group met Feb. 16, 2005. The revised draft of regulations will be distributed to advisory group members and posted on DWC's Web site in May 2005.

Hiring

While the division's total number of authorized positions is still less than the peak number authorized in fiscal year 1994-1995, DWC did acquire 300 new positions as a result of SB 899 and other reform measures.

The division has hired 166 new employees and promoted 134 existing employees since Jul. 1, 2004. At the current hiring rate of approximately 25-30 new employees per month, DWC hopes to fill all available positions by the end of next fiscal year, which will provide increased levels of service to system users.

To ensure all DWC professional staff whose work is impacted by changes to the law are up-to-date, and to ensure resources are used efficiently and effectively, the division is conducting statewide training of 368 staffers in April. Topics covered at the training include: medical provider networks; utilization review; permanent disability rating issues; qualified medical examiners; spinal surgery second opinion; case law update; supplemental job displacement benefits; new stipulation/compromise and release forms adequacy; apportionment; extra-jurisdictional issues and more.

Education, training and outreach

In addition to DWC's regulatory priorities, hiring and internal training, the division's focus has been on:

- Providing high quality education to users of the workers' comp system
- Making valuable information easily accessible to the public through the DWC Web site
- Revitalizing injured worker workshops at all 24 district offices.

Educational conference

This annual event, hosted by DWC in association with the International Workers' Compensation Foundation, constitutes the largest workers' compensation training in the state and allows claims administrators, medical providers, attorneys, rehabilitation counselors and others in the workers' compensation community to learn firsthand about the division's latest developments and ongoing programs.

This year's conference focused on key topics in SB 899. Many SB 899 provisions -- such as medical provider networks and the new permanent disability rating schedule -- became effective Jan. 1, 2005, making the conference, held in February, particularly timely.

This conference was the best attended in the twelve years it's been held: Both the Los Angeles and Oakland locations sold out, with 800 registrants each. Due to demand, the division allowed 40 walk-in registrations at both locales. The exhibitor spaces also sold out, with 45 at each conference.

The conference is certified by eight organizations representing attorneys, doctors, rehabilitation counselors, case managers, claims adjusters and nurses for continuing educational credits. Over 600 people signed up for CEU credits, demonstrating that attendees are workers' compensation professionals.

"Information delivered was excellent, just what we needed to hear."

--DWC educational conference attendee

AMA guide training

In cooperation with the American Medical Association (AMA), the California Medical Association (CMA) and the Commission on Health and Safety and Workers' Compensation (CHSWC), the DWC conducted training on proper use of the AMA guides. Under the new permanent disability rating system, medical providers must use the AMA guides to rate an injured worker's level of impairment -- a vital feature of California's reform measure.

While the AMA guides are used in 41 other states and in the federal workers' comp system, their use in California is new. Conducted for adjusters, attorneys, medical doctors, rehabilitation nurses and case managers, this crucial training provided system users with information on key concepts and terms, how to rate complex impairments and determine their role in disability assessment, how to rate difficult cases appropriately and how to write reports correctly.

Held in Anaheim and South San Francisco in November 2004, approximately 400 people attended each session.

DWC Web site

The division has embarked on a four-phase project to improve the flow of information about workers' compensation rights and responsibilities to system users. The project will take DWC's Web site from obsolete and difficult to navigate to user-friendly and fresh by:

- Changing the site structure to a user-based format
- Redesigning, updating and integrating content and introducing more graphics
- Creating a forms center with fill-able/downloadable forms
- Introducing new technology, such as instant electronic notification for targeted newlines and streaming video.

Injured worker workshops

This year, the DWC revitalized an education program, which provides information and assistance to injured workers through monthly workshops at local DWC offices.

While enacted 10 years ago, in recent years most workshops for injured workers were suspended due to a lack of adequate funding, a lack of proper staffing levels and outdated materials. It took the commitment of necessary financial resources by the DWC administrative director to revitalize the program.

The free workshops consist of a structured presentation followed by a question and answer session, and are held on a regular basis at local DWC Information and Assistance Unit offices around the state.

As of April 2005, eight offices are conducting the workshops. The division's goal is to have all 24 local offices conducting workshops as quickly as possible.

In a Mar. 7, 2005 *Sacramento Bee* article, Carol Rapicavoli, 41, of San Francisco, called the workshops "empowering."

Claims process efficiency

DWC electronic adjudication management system (EAMS)

DWC is one year into its project to upgrade and replace current court technology and supporting infrastructure to better meet statutory guidelines, realize operational efficiencies and lower the overall cost of the California workers' compensation system.

EAMS technology will greatly improve DWC and Workers' Compensation Appeals Board (WCAB) ability to quickly resolve claims by enhancing responsiveness to claim filings, employing more efficient and effective calendaring to ensure all dispute parties are available to meet with judges, and improving ability to track case documentation. Primary objectives for the new system include:

- Streamlining the process of creating files, setting hearings and serving decisions, orders and awards
- Improving access to case records while preserving confidentiality
- Providing cost and time savings both to case parties and the state
- Reducing delays and eliminate duplication
- Reducing file storage space and shipping costs
- Standardizing the DWC desktop computing environment
- Supporting enforcement against uninsured employers

The output of basic information is being built into the system, which will allow the state -- rather than private entities -- to make information easily available to parties in need of case status.

The EAMS system will also improve DWC's ability to project resource needs and measure performance. In general, EAMS will allow markedly improved reporting of division processes and results. Case handling time frames, comparison of work practices and consistency will be measurable under the EAMS system.

Disaster readiness will also be possible, as EAMS will allow near instantaneous movement of cases to other offices should an emergency such as an earthquake make that necessary.

From a *Work Comp Central* article posted Apr. 15, 2005:

Los Angeles County has reduced its workers' compensation costs by 10.5 percent thanks to last year's reform bill and an increased emphasis on return-to-work programs, according to a report delivered this week to the Board of Supervisors.

"I think the reforms had the major impact -- and the fact that the departments are getting more active in terms of return-to-work efforts and in terms of getting involved in their own claims."

--Los Angeles County Workers' Compensation Chief Program Specialist Alex Rossi